

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESale PRICE LITIGATION		MDL No. 1456  CIVIL ACTION: 01-CV-12257-PBS  Judge Patti B. Saris
THIS DOCUMENT RELATES TO 01-CV-12257-PBS AND 01-CV-339		

**MOTION OF DEFENDANTS BRISTOL-MYERS SQUIBB COMPANY,  
ONCOLOGY THERAPEUTICS NETWORK CORPORATION AND  
APOTHECON, INC. TO FILE UNDER SEAL THEIR MEMORANDUM  
OF LAW AND THE SZABO DECLARATION IN SUPPORT THEREOF,  
TOGETHER WITH ASSOCIATED EXHIBITS, IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants Bristol-Myers Squibb Company, Oncology Therapeutics Network Corporation and Apothecon, Inc. (hereinafter "BMS"), by their attorneys, hereby move this Court for leave to file under seal Defendant Bristol-Myers Squibb's Individual Memorandum In Opposition to Class Certification together with exhibits thereto and the Declaration of Zoltan Szabo In Support of Defendant Bristol-Meyers Squibb Company's Individual Memorandum in Opposition to Plaintiffs' Motion For Class Certification and exhibits thereto.

Defendant Bristol-Myers Squibb's Individual Memorandum In Opposition to Class Certification together with exhibits thereto and the Declaration of Zoltan Szabo In Support of Defendant Bristol-Meyers Squibb Company's Individual Memorandum in Opposition to Plaintiffs' Motion For Class Certification together with exhibits thereto were filed with the Court on October 25, 2004 together with the filings from other "Track I" defendants in the above-

captioned case, but the two BMS-related pleadings were inadvertently omitted from the Track I Defendants' Motion for Leave To File Under Seal.

Pursuant to the Protective Order entered by this Court on December 13, 2003 (the "Protective Order") both the parties in the above-captioned case and non-party witnesses have designated many documents and other information produced in this litigation as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL". The submissions listed above incorporate – directly or indirectly – information that has been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL". The BMS submissions quote from and attach confidential documents and refer to pricing data that BMS deems highly proprietary in nature. Pursuant to paragraph 15 of the Protective Order, any document or pleading containing quotes from or otherwise referencing such information shall be filed under seal.

On September 3, 2004, citing similar reasons, plaintiffs sought leave to submit papers in support of their motion for class certification under seal.

WHEREFORE, BMS submits this motion for leave to file under seal which is made in substantially identical form to the Track I Defendants' Motion for Leave To File Under Seal and respectfully requests leave to file the aforementioned documents under seal.

Respectfully submitted,

BRISTOL-MEYERS SQUIBB COMPANY,  
ONCOLOGY THERAPEUTICS  
NETWORK CORP. and  
APOTHECON, INCORPORATED

By their attorneys,

/s/ Joseph E. Haviland  
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Dated: October 26, 2004

LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for the Track 1 Defendants conferred with counsel for plaintiffs on this motion. Plaintiffs reserved the right to challenge, upon review of the documents that are being filed under seal pursuant to this motion, the confidentiality of any such documents in accordance with the Protective Order.

/s/ Lucy Fowler

Lucy Fowler

CERTIFICATE OF SERVICE

I, Lyndon M. Tretter, certify that I caused to be served the foregoing document to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 in the above-captioned proceeding by sending on October 26, 2004, a copy to Verilaw Technologies for posting and notification to all parties.

[Original signature on file with the Court]

/s/ Lyndon M. Tretter

Lyndon M. Tretter